

Attorney General Jennings Unveils Internal Reform Measures for Criminal Prosecution

Prosecutors encouraged to divert more low-level offenders to treatment, ask for low end of sentencing, support commutations and expungements

Citing incarceration and recidivism rates that outstrip the national average, an unprecedented opioid epidemic, and a groundswell of public support for reform, **Attorney General Kathy Jennings** announced Monday morning more than 30 internal protocols and positions for the Department of Justice's handling of issues from charging and sentencing to probation, bail, and expungements.

A memo to DOJ prosecutors and staff outlines a comprehensive body of presumptive guidelines that emphasize judicial discretion, increase diversion for lower-level offenses, reduce collateral consequences associated with criminal records, and guide an overall shift in focus toward more violent crime.

Attorney General Jennings said internal reform is only the first step of many toward a more fair and equal criminal justice system. The Attorney General said she will work with legislators, community advocates and law enforcement on a number of changes to state criminal code this year that will also lead to better outcomes than current laws.

"We don't have to choose between public safety and progress; we can and must choose both," said Attorney General Jennings. "These policies reaffirm the Department of Justice's longstanding mission to protect the rights of all Delawareans:

victims, the public, and the accused. Our decisions substantially impact peoples' lives and livelihoods, their families, and the community's faith in the system. We are continuing to work on other initiatives outside of our office, but our internal reforms are an important step forward in a long journey toward the model of justice that the people of this state expect of us, and that we expect of ourselves."

Delaware has made significant progress reducing its prison population and pretrial detainee population (down 11 percent and 33 percent, respectively, from 2014 to 2018). However, room for improvement still remains: [according to the Sentencing Project](#), Delaware's incarceration rate in 2016 ranked 16th among all states and was among the highest in the region. The state also has a high rate of recidivism: figures from the [Criminal Justice Council](#) show a three-year re-arrest rate of 72.8 percent.

Governor John Carney, who recently announced an initiative to improve re-entry procedures in Delaware, praised the announcement.

"We have a responsibility to make sure Delaware's criminal justice system is fair to all Delawareans," said Governor Carney. "We've been focused on helping all offenders in Delaware successfully re-enter their communities once they have served their time. These policy changes at the Department of Justice represent another real step forward, by ensuring that our resources are focused on prosecuting crimes that represent the greatest threat to our communities. I want to thank Attorney General Kathy Jennings for her leadership on this issue, and for all of her efforts to make Delaware's criminal justice system more fair for all Delawareans."

Key provisions of the memo include:

- Support for pretrial practices that deemphasize cash bail for routine misdemeanors

- Guidance to avoid unjust “stacking” of minimum mandatory sentences and to reduce requests for the Courts to declare a defendant a habitual offender in order to increase sentences, especially with non-violent crimes
- Policies that aim to address the opioid epidemic by relying on mental health and drug treatment needs before prison sentences
- Emphasis on diversion and alternatives to prosecution for several categories of low-level offenses, including simple possession of marijuana and prostitution
- Consideration of alternatives to prison that limit collateral consequences while accounting for public safety, such as house arrest
- Emphasis on judicial discretion in sentencing, shorter sentencing recommendations, probation in lieu of some prison sentences, and recommending judges limit probation to one year in most scenarios
- Opposition to the issuance of warrants and driving license revocation for failure to pay fines and fees when the accused is without the ability to pay
- Consideration of collateral consequences for undocumented victims and witnesses
- Juvenile justice provisions that encourage extended Family Court jurisdiction and discourage trying children as adults except when necessary
- Support for expungements for crimes that are now legal, and for nonviolent charges in which a *nolle prosequi* (a decision not to pursue charges) has been entered on the basis of insufficient evidence
- Support for pardons for isolated, non-violent crimes when the applicant has demonstrated sufficient rehabilitation

All of Attorney General Jennings’ internal changes are presumptive guidelines; prosecutors will be able to seek exceptions to policies when individual cases’ facts and circumstances warrant the deviation.

Delaware Center for Justice Policy Director Kate Parker said the announcement made important progress on fairness in the criminal justice system.

“The Delaware Center for Justice applauds Attorney General Jennings, State Prosecutor Roop and their leadership team for promulgating guidelines that we believe will transform the quality of justice for Delawareans involved with the criminal legal system,” said Parker. “These guidelines push us towards a safer, fairer, more effective legal system one where the race and gender of the defendant or victim or the amount of money they have in their pockets will no longer predict court outcomes.”

New Castle County Chief of Police Col. Vaughn Bond praised the Attorney General’s attention to mental health and addiction issues in particular.

“I look forward to working with the Attorney General to not only focus on criminal activity, but also on treating individuals who are suffering from addiction and mental illness, many of whom comprise a significant portion of our incarcerated population,” said Col. Bond.

Read the memo concerning the policy change [here](#).